



October 2, 2000

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Honorable Harold Rogers
Chairman, Subcommittee on Commerce,
Justice, State, and the Judiciary
Committee on Appropriations
H309 Capitol Building
Washington, D.C. 20515-6017

Dear Chairman Rogers:

On behalf of the Board of Directors ("Board") of the Legal Services Corporation ("LSC"), I write to address the issues raised by the LSC Inspector General E. R. Quatrevaux in his recent letter dated September 14, 2000.

For the reasons described below, the Board does not believe that there is a need to modify the access provisions of current law. We oppose amending this law at this time. The Board also remains strongly of the view that LSC's budget request is amply warranted for additional Management and Administration ("M&A") funds "to strengthen its capacity to ensure compliance with Congressional restrictions enacted in 1996, to monitor and to improve the accuracy of its Case Services Reporting ("CSR") system, and to conduct compliance investigations." Finally, the Board unequivocally denies that it or LSC management interfered in any way with the Inspector General's subpoenas to two Georgia programs to secure information pursuant to a "longitudinal study" that is neither an audit nor an investigation.

ACCESS LEGISLATION

The LSC Board is fully committed to supporting access to records for the Inspector General and LSC Management in conducting their statutory obligations. At its November 1999 meeting, the Board passed a resolution expressing its explicit support for access to records needed by the IG and LSC management. However, the Board does not support amending the law to provide access to communications and information that have been historically protected by the attorney-client privilege. Current law provides that time records, eligibility records, client names, and retainer agreements "shall be made available" to any federal department or agency monitoring or auditing the activities of LSC or a recipient, except for such records or reports that are subject to the attorney-client privilege. The LSC Board strongly feels that the current law properly balances the need for information by auditors and other monitors with the well-established jurisprudence embodied in the attorney-client privilege.

With regard to Mr. Quatrevaux's claims that "[g]rant recipients have repeatedly denied the Office of Inspector General ("OIG") access to information," only two

programs, the Legal Aid Bureau of Maryland and Legal Services of New York City declined to provide information requested by the IG for an audit of case statistics, raising issues related to the attorney-client privilege. Mr. Quatrevaux does not mention that the other 28 grantees that were asked to provide data in the CSR audit promptly complied with all the OIG's requests. In addition, LSC management fully supported the IG's information request by threatening to suspend funding to the two recalcitrant programs if they did not comply. After the U.S. District Court resolved what it described as a difficult issue, the Maryland program complied with the subpoena. The New York program has appealed the ruling.

Two additional programs, the Georgia Legal Services Program and Legal Aid Society Inc., have declined to provide information to the IG requested pursuant to a "longitudinal study." We understand that the programs have resisted not only because they believe the subpoenas unnecessarily seek privileged and confidential information, but also because they are unduly onerous. In its recently concluded September 18, 2000 meeting, the Board reaffirmed its position that there is no need to amend the current law regarding access, and that to do so would have a potentially profound chilling effect upon needy clients.

APPROPRIATION FOR MANAGEMENT AND ADMINISTRATION

Mr. Quatrevaux recommends LSC's request for additional M&A funds be denied for FY2001. He states that that LSC management negotiated "protocols" in compliance inspections of three programs that were "ineffective inspection procedures" and "waived" LSC statutory authority. At its September 2000 meeting, the Board inquired whether management viewed these protocols (and the underlying inspections) to have been "ineffective" as charged by the IG. LSC President John McKay unequivocally stated that the inspection of one program and the testing of the protocol at the second program had proceeded smoothly, and that the third was scheduled to take place in November 2000. The Board supports management's proper exercise of discretion in establishing mechanisms to review needed information to conduct investigations.

It also notes that within the last two years, LSC management has successfully reviewed needed records from over 25 grantees, and made substantial improvement in grantee compliance with the Case Service Reports (case statistics) system. LSC's Special Report to Congress (April 2000) outlines in detail progress made by LSC and grantees in compiling and reporting more accurate case statistics for 1999, and explains future plans to expand the data collection system to provide the Congress and the public with more complete information in future years.

The additional funds requested (\$1.54 million) by LSC management would greatly enhance LSC's ability to ensure compliance with congressional restrictions, to monitor and improve the accuracy of its CSR system, and to conduct on-site compliance investigations. The Board fully supports this funding request. We also note Mr. Quatrevaux had previously declared his support for this specific funding request.

ALLEGED "UNDERMINING" OF OIG ACCESS

The Board spent a considerable amount of time at its September 2000 meeting discussing with Mr. Quatrevaux its concerns about the "longitudinal study" that the OIG is pursuing with two Georgia programs, and his accusation that the Board and LSC management had somehow "undermined" his efforts in this regard.

Mr. Quatrevaux had disclosed the study at the June 2000 Board meeting, indicating that his office was seeking to develop a "tool" that would help grantees and LSC to serve their clients better. He was encouraged by the Board to seek the collaboration and cooperation of the programs and to involve them in the design of the project, in order to assure that the data that is produced would be useful to the programs. Mr. Quatrevaux expressed his agreement with this approach and one of his Assistant Inspectors General subsequently advised LSC management that subpoenas would not be considered for the study.

Three weeks later, without any explanation, the two Georgia programs were subpoenaed. There was some question about the statutory authority of the Inspector General to perform program operating responsibilities of the LSC; there was also a related question about the appropriate role of the Board as "agency head" in supervising the non-audit, non-investigatory activities of the OIG that seemed to be programmatic in nature and that involved the expenditure of funds. Consequently, I asked LSC Vice Chairman and OIG Liaison John Erlenborn, a former member of the Congress who is well acquainted with the Inspector General Act, to meet with Mr. Quatrevaux and attempt to gain a better understanding of the study. As Mr. Erlenborn and I both explained to the Inspector General in the course of the September Board meeting, there was no attempt to "interfere" with the subpoenas or the study; nor was there any intention or effort on the part of management or the Board to "encourage" the Georgia programs to resist the subpoenas. We merely sought information concerning the process, and LSC management sought to assure programs that it was not prepared at that time to suspend funding.

We believe the misunderstanding that is reflected in Mr. Quatrevaux's letter has been resolved in the course of the Board meeting in September 2000. If you would like, we could furnish to you a copy of the relevant portion of the meeting transcript. Nonetheless, if you or your staff have any questions or wish any further information on these various subjects, I would be happy to respond.

Respectfully submitted,

Douglas S. Eakeley
Chairman

cc: Honorable José E. Serrano, Subcommittee on Commerce, Justice, State, and the Judiciary,
Committee on Appropriations
Honorable Jerrold Nadler, Subcommittee on Commercial and Administrative Law,
Committee on the Judiciary
Honorable Ernest F. Hollings, Subcommittee on Commerce, Justice, State, and the Judiciary,
Committee on Appropriations
Honorable Edward M. Kennedy, Committee on Health, Education, Labor, and Pensions
LSC Board of Directors
Mr. Edouard R. Quatrevaux